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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/625,080	07/25/2000	Stephen J. Brown	HERO-1-1097	6262

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EXAMINER

HAYES, JOHN W

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/625,080

Applicant(s)

BROWN, STEPHEN J.

Examiner

John W Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Applicant has canceled claims 1-15 and added new claims 16-19 in the preliminary amendment filed 10 April 2001.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claims 16 and 18**, the claims recite both "wherein the collected information is an amount of weight loss by each individual in the population..." and "wherein the collected information is an amount of a donation made by each individual...". Furthermore, the claims recite that the "determined statistical information is a combined weight loss for a plurality of the individuals in the population" and that the "determined statistical information is a total amount of donations mad by a plurality of the individuals in the population". It is unclear to the examiner to the examiner how the collected information could be both of these types of information concurrently or how the determined statistical information could be both of these types of information concurrently. Examiner submits that this causes ambiguity in the claim language, and for this reason, claims 16 and 18 are deemed to be indefinite. Claims 17 and 19 are also rejected based on their dependency on claims 16 and 18.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al, U.S.

Patent No. 6,128,599.

As per **Claims 16-17**, Walker et al disclose a method of aggregating information for individuals in a population thereof, said method comprising:

(a) collecting information for each individual at a client device associated with said individual (Figure 6; Col. 4, lines 22-30; Col. 8, lines 23-30);

(b) sending said collected information from said client device to a server device (Col. 4, lines 10-14 and 33-37; Col. 10, lines 53-60);

(c) generating statistical information from said collected information sent from a plurality of said client devices (Col. 2, lines 52-60; Col. 4, lines 50-55; Col. 5, lines 42-50; Col. 7, lines 45-55; Col. 8, lines 49-55; Col. 9, lines 16-33; Col. 10, lines 59-65);

(d) distributing said statistical information to said individuals (Col. 4, lines 1-5 and 59-63; Col. 10, lines 35-50); and

(e) repeating steps a - d after a period of time has elapsed (Col. 7, lines 30-37 and 55-60; Col. 8, lines 16-33; Col. 10, lines 52-65),

wherein said statistical information includes one or more aggregate values of the collected information, and wherein the collected information is an amount of a transaction by each individual in the population and said determined statistical information is a combined transaction amount for a plurality of the individuals in the population (Figure 6; Col. 2, lines 52-60; Col. 4, lines 22-30 and 50-55; Col. 5, lines 42-50; Col. 7, lines 45-55; Col. 8, lines 23-30 and 49-55; Col. 9, lines 16-33; Col. 10, lines 59-65).

Walker et al, however, fails to disclose wherein the collected information is an amount of weight loss by each individual in the population and the determined statistical information is a combined weight loss for a plurality of the individuals in the population or wherein the collected information is an amount of a donation made by each individual and the determined statistical information is a total amount of donations made by a plurality of the individuals in the population. However, the differences between transaction information and weight loss or donation information are only found in the non-functional

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descriptive material and are not functionally involved in the steps recited. The collecting, sending, generating, distributing and repeating steps would be performed the same regardless of the descriptive material since none of the steps explicitly interact therewith. In other words, type of information collected would only mean something to a person monitoring the output after the final step of the method.

Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would also have been obvious to a person of ordinary skill in the art at the time of applicant's invention to collect any type of data, generate statistical information based on the collected data and distribute the data to individuals because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claims 18-19, Walker et al disclose a system for aggregating information for individuals in a population thereof, said system including:

- a set of client devices, each disposed for collecting an individual value for an individual associated therewith (Figure 1; Col. 4, lines 22-30; Col. 8, lines 23-30);
- a server device, disposed for receiving said individual values, and for determining at least one aggregate value in response thereto (Figure 1; Col. 2, lines 52-60; Col. 4, lines 10-14, 33-37 and 50-55; Col. 5, lines 42-50; Col. 7, lines 45-55; Col. 8, lines 49-55; Col. 9, lines 16-33; Col. 10, lines 53-65) and
- a communication path between said client devices and said server device (Figure 1);

wherein said server device distributes said at least one aggregate value to a plurality of said client devices (Col. 4, lines 1-5 and 59-63; Col. 10, lines 35-50);

wherein each of the client devices repeats collecting the individual value for the individual associated therewith, said server device repeats the determination of at least one aggregate value in response to the repeated collection performed by the client devices and said server device distributes the repeated determination of the at least one aggregate value to a plurality of said client devices, when a

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preset period of time has elapsed since the previous collection of individual values, determination of at least one aggregate value and distribution of said at least one aggregate value (Col. 2, lines 52-60; Col. 4, lines 1-5 and 50-63; Col. 5, lines 42-50; Col. 7, lines 30-37 and 45-60; Col. 8, lines 16-33 and 49-55; Col. 9, lines 16-33; Col. 10, lines 35-50 and 59-65);

wherein the collected individual value is an amount of a transaction by each individual in the population and said determined at least one aggregate value is a combined transaction amount for a plurality of the individuals in the population (Figure 6; Col. 2, lines 52-60; Col. 4, lines 22-30 and 50-55; Col. 5, lines 42-50; Col. 7, lines 45-55; Col. 8, lines 23-30 and 49-55; Col. 9, lines 16-33; Col. 10, lines 59-65).

Walker et al, however, fails to disclose wherein the collected individual value is an amount of weight loss by each individual in the population and the determined aggregated value is a combined weight loss for a plurality of the individuals in the population or wherein the collected individual value is an amount of a donation made by each individual and the aggregate value is a combined donation made by a plurality of individuals in the population. However, the differences between transaction information and weight loss or donation information are only found in the non-functional descriptive material and are not functionally involved in the steps recited. The collecting and determining steps would be performed the same regardless of the descriptive material since none of the steps explicitly interact therewith. In other words, type of information collected would only mean something to a person monitoring the output after the final step of the method. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would also have been obvious to a person of ordinary skill in the art at the time of applicant's invention to collect any type of data, generate aggregate values based on the collected data and distribute the data to individuals because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Conclusion

6. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Walker et al [6,466,919 B1] disclose a system for aggregating multiple buyers utilizing conditional purchase offers.
- Lore et al disclose a method for aggregation of data in a database management system

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hayes whose telephone number is (703)306-5447. The examiner can normally be reached Monday through Friday from 5:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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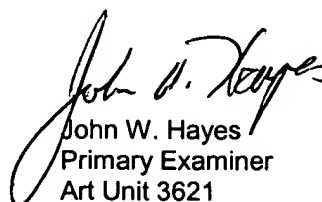
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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington,
VA, 7th floor receptionist.


John W. Hayes
Primary Examiner
Art Unit 3621

March 31, 2005